

**Applicant:** Zitro Properties

**Agent:** Garcia/Kraemer & Associates

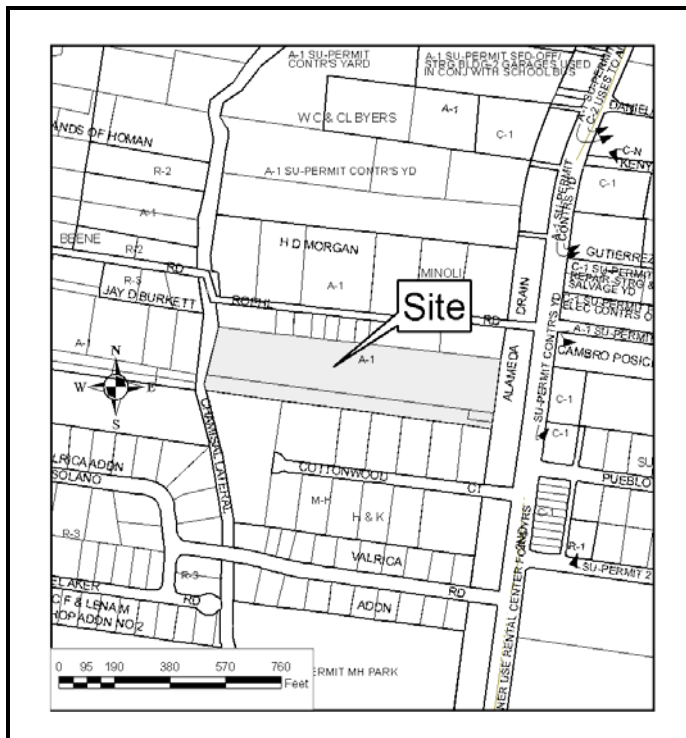
**Location:** 7413, 7417, 7421 Second St. NW

**Property Size:** 5.1 acres (approximately)

**Existing Zone:** A-1

**Proposed Zoning/SUP** R-1

**Recommendation:** Denial



**Summary:** This request is for a zone map amendment from A-1 to R-1 zoning on a 5.1 acre (approximately) property on the west side of Second Street, about three-quarters of a mile north of Osuna Rd. If approved, R-1 zoning would allow the applicant to develop a residential subdivision with lot sizes of at least one-third acre, based upon the Semi-Urban Area Comprehensive Plan designation for R-1 zoning.

This request was deferred at the September 7, 2005 CPC hearing to allow the applicant to work with neighbors to revise the development plan for a Special Use Permit a Planned Development Area. On November 21, 2005, the applicant submitted a conceptual site plan and project description for a Planned Development Area, which he would like to be considered at the December 7, 2005 CPC hearing.

**Staff Planner:** Catherine VerEecke, Program Planner

- Attachments:**
1. Application
  2. Area and Land Use Maps
  3. Letters from neighbors & Alameda North Valley Association (for 9/7/05)
  4. Letters in opposition (for 12/7/05)
  5. Request for Planned Development Area (submitted 11/21/05)

Bernalillo County Departments and other agencies reviewed this application from 7/25/05 to 8/15/05. Their comments were used in preparation of this report, and begin on Page 11.

**AGENDA ITEM NO.: 5**  
**County Planning Commission**  
**December 7, 2005**

CZ-50006 Garcia/Kraemer & Associates, agent for Zitro Properties, requests approval of a zone map amendment from A-1 to R-1 on Tracts 178A, 179A1 & 179A2, located at 7413, 7417 & 7421 2<sup>nd</sup> Street NW, on the west side of 2<sup>nd</sup> Street between Roehl Road and Cottonwood Court, containing approximately 5.1 acres. (D-15) (DEFERRED FROM THE SEPTEMBER 7, 2005 HEARING)

**AREA CHARACTERISTICS AND ZONING HISTORY**  
**Surrounding Zoning & Land Uses**

	<b>Zoning</b>	<b>Land use</b>
<b>Site</b>	A-1	Vacant buildings
<b>North</b>	A-1	Single family residential
<b>South</b>	M-H	Single family residential
<b>East</b>	Lateral/ROW C-1/Special Use for Contractor's Yard	Alameda Lateral & Second St. Contractor's Yard
<b>West</b>	--	Chamisal Lateral

**BACKGROUND:**

**The Request**

The applicant is requesting a zone change from A-1 to R-1 zoning on a 5.1 acre property located on the west side of Second St., about three-quarters of a mile north of Osuna Rd. between the Alameda Lateral and the Chamisal Lateral. The property consists of three parcels, namely a 3.5 acre rectangular lot, a 1.2 acre, long, narrow parcel, and a 2000 sq. ft. rectangular lot. The property is mainly vacant with the exception of three old residential buildings. It appears the property has also been used as pasture until recently.

Request justification.

In the response to Resolution 116-86, the applicant argues that the proposed zone change is appropriate for the property. He states a custom home-builder would construct the development with possibly 10 homes along a 50 foot road and another 4-6 lots at the end of the cul-de-sac. There will be covenants and conditions to ensure quality development to include native landscaping and access to open areas around the site to keep with the rural appearance of the site. The applicant further states he feels the request is not in conflict with the North Valley Area Plan and will be consistent with R-1 zoning. He points out that there is higher density residential development north and south of the site (one-half acre or less lots), and properties adjacent to the site to the south have mobile homes on them and beyond this is a mobile home park.

**Surrounding Land Uses and Zoning**

The subject property is located in a residential neighborhood along the west side of Second St., which has a semi-rural character. A majority of the properties to the north of the site are zoned A-1, which either have single family dwellings or are vacant. To the immediate north, the properties are original MRGCD tracts, which range from about 4000 square feet to more than one-half acre, some of which have been combined as single family dwellings. To the north of these properties are large lots (1-2 acres) with A-1 zoning. To the south is the H & K Subdivision with M-H zoning and lots ranging from about 19,000 feet to more than 2 acres. Beyond this subdivision, properties have R-1 zoning or are in the Village of Los Ranchos.

On the west side of Second St., in the immediate vicinity of the property, there are no Special Use Permits or commercially-zoned properties. However, about 700 feet to the north, a school bus yard exists under a Special Use Permit (CSU 74-10), and several other contractor's yards have been approved (e.g. CSU-20; CSU-74-10). In 1995, a Special Use Permit was granted for a Planned Development Area to allow half-acre single-family residential dwellings (CZ-94-2). In May 2005, the Board of County Commissioners approved a zone change from A-1 to R-1 on a 7 acre property about one mile to the north, nearby Ranchitos Rd. (CZ-50002).

There are more non-residential uses on the east side of Second St. (nearby the site). Properties fronting the east side of the street have C-1 zoning, and several of these also have Special Use Permits, mainly for Contractor's Yards (e.g., CSU-85-32). Further east, however, properties have A-1 zoning with lots of an acre or more, and to the southeast, properties have R-1 zoning with lots of about one-third of an acre. Further south, a large tract of land has M-1 zoning with a variety of industrial uses on it. Beyond this to the south is the Zia Gardens Subdivision with R-1 zoning.

## **APPLICABLE PLANS AND POLICIES:**

### **Albuquerque/Bernalillo County Comprehensive Plan**

The site is located in the Semi-Urban Area as delineated in the Albuquerque/Bernalillo County Comprehensive Plan. The principal goal for this area is to “maintain the character and identity of semi-urban areas which have environmental, social or cultural conditions limiting urban land uses.”

Policy a (Semi-Urban Area) states “Development in the Semi-Urban area shown by a Plan map shall be consistent with development limitations imposed by topography, soil conditions, groundwater quality, agricultural potential, flood potential, scenic qualities, recreation potential and existing development; overall gross density shall be up to 3 dwelling units per acre.”

### **North Valley Area Plan**

This property is located within the Semi-Urban area of the North Valley Area Plan. The Plan states that properties in this area may have special soil and water limitations or scenic, agricultural, or recreational assets, with the appropriate gross density at 1 to 3 dwelling units per acre.

The property is located in the “Second Street to Fourth Street Sub-Area” of the Plan, which extends from Fourth Street in the west to the railroad in the east, and north from Montano Rd. to Paseo del Norte. The plan calls out the portion of Second St. between Osuna Rd. and Paseo del Norte as “a transitional area between the more rural to the north and the more urban environment in the south. The provision of urban services into this portion of the plan area has supported requests for higher density residential and commercial zoning.”

The Plan states that under the Comprehensive Plan Scenario residential development would be sited to retain the use of the Chamisal Lateral for irrigation of pastures and gardens. Provision of trails along the laterals would be strengthened. Under the preferred scenario, areas to the north of Montano would retain the present zoning.

Policy 4.4 of the Plan states that the County and City shall encourage rural standards for development especially within the Semi-Urban and Rural Comprehensive Plan areas of the North Valley.

Policy 2 (Land Use) states ‘The City and County shall stabilize residential zoning and land use in the North Valley Area.’ This may be accomplished through the following:

- a. Limit the location, duration, and type of new uses allowed by Special Use Permit.
- b. Cancel discontinued Special Use Permits granted where existing conditions of approval are not met and permits that are otherwise in violation of the Zoning Ordinance.
- c. Retain existing County A-1 zoning as the only Rural Agricultural zone intended to provide agricultural activities and spacious development.
- d. Require landscape buffering and other measures necessary to limit potential impacts of non-residential uses on residential areas.
- e. Retain the low density character of the North Valley.

Policy 2.2.d (Land Use) of the Plan states that “the County and City shall retain the low density character of the North Valley and that the minimum lot area for R-1 zoned land in the Rural area should be three-quarters of an acre.”

Policy 3.a (Land Use) states that “the City and County shall retain existing residential zoning on Alameda Blvd., Second Street, and on future roadway corridors.”

Policy 7.1 states the City and County shall stabilize land use to protect affordable housing and land presently zoned for housing.

- a. Maintain and expand areas zoned for residential uses including A-1, R-1, M-H
- b. Limit encroachment of non-residential uses into residential areas
- c. Encourage residential zoning of parcels with residential uses.

### **Bernalillo County Zoning Ordinance**

Resolution 116-86 lists policies for evaluating a Zone Map changes and Special Use Permit applications.

- A. A proposed land use change must be found to be consistent with the health, safety, and general welfare of the residents of the County.
- B. The cost of land or other economic considerations pertaining to the applicant shall not be the determining factor for a land use change.
- C. A proposed land use change shall not be in significant conflict with adopted elements of the Comprehensive Plan or other Master Plans and amendments thereto including privately developed area plans which have been adopted by the County.
- D. Stability of the land use and zoning is desirable; therefore, the applicant must provide a sound justification for land use change. The burden is on the applicant to show why the change should be made.
- E. The applicant must demonstrate that the existing zoning is inappropriate because:
  1. There was an error in the original zone map.
  2. Changed neighborhood or community conditions justify a change in land use or
  3. A different use category is more advantageous to the community as articulated in the Comprehensive Plan or other County Master Plan, even though (1) and (2) above do not apply.
- F. A land use change shall not be approved where some of the permissive uses in the land use change would be harmful to adjacent property, the neighborhood or the community.
- G. A proposed land use change which, to be utilized through land development, requires major and unprogrammed capital expenditures by the County may be:
  1. denied due to lack of capital funds; or

2. granted with the implicit understanding that the County is not bound to provide the capital improvements on any special schedule.
- H. Location on a collector or major street is not itself sufficient justification of apartment, office, or commercial zoning.
- I. A zone change request which would give a zone different from the surrounding zoning to one small area, especially when only one premises is involved, is generally called a "spot zone." Such a change of zone may be approved only when:
  1. The change will clearly facilitate revitalization of the Comprehensive Plan and any applicable adopted land use plan; or
  2. The area of the proposed zone change is different from surrounding land because it could function as a transition between adjacent zones; because the site is not suitable for the uses allowed in any adjacent zone due to topography, traffic, or special adverse land uses nearby; or because the nature of structures already on the premises makes the site unsuitable for the uses allowed in any adjacent zone.
- J. A zone change request which would give a zone different from the surrounding zoning to a strip of land along a street is generally called a "strip zoning." Such a change of zone may be approved only when:
  1. The change will clearly facilitate revitalization of the Comprehensive Plan and any applicable adopted sector development plan or area development plan; or area of the proposed zone change is different from surrounding land because it could function as a transition between adjacent zones; because the site is not suitable for the uses allowed in any adjacent zone due to topography, traffic, or special adverse land uses nearby; or because the nature of structures already on the premises makes the site unsuitable for the uses allowed in any adjacent zone due to traffic or special adverse uses nearby.

## **ANALYSIS:**

### **Surrounding Land Use and Zoning**

The applicant has requested a zone change from A-1 to R-1 zoning to allow the development of a residential subdivision with one-third acre lots. He states the development would have between 12 and 16 lots of this size.

The request could be viewed as consistent with the zoning and land uses of the area, including a variety of lot sizes and a mixture of A-1, M-H, and R-1 zoning and some M-1 zoning and Special Use Permits for both residential and non-residential uses. In addition, properties on the east side of Second St. to the south have R-1 zoning with small lots.

However, there also are a number of properties with A-1 zoning near the site, which is contrary to what the applicant is proposing. Staff is concerned that the applicant has not explained why the property should develop with the smaller (one-third acre) lots, rather than develop one acre lots under A-1 zoning. Further, granting the new request on this particular parcel appears to

constitute a 'spot zone' as the property is not immediately adjacent to other properties with R-1 zoning.

### **Plans**

The request appears to be consistent with the Comprehensive Plan and the North Valley Area Plan land use designations in the Semi-Urban area, which allows lots of a minimum of one-third of an acre. However, the North Valley Area Plan scenarios suggest that properties to the west of the Alameda Lateral extending up to the Chamisal Lateral should retain their rural appearance and low density through the use of irrigation and that properties adjacent to irrigation ditches should retain their existing A-1 zoning. The Comprehensive Plan states that particular attention should be given to properties in the Semi-Urban Area with special features such as agricultural potential and scenic qualities. The applicant has not included any of these policies in his justification and also does not explain why cluster housing, as explicated in the North Valley Area Plan, has not been chosen as an semi-rural alternative to the higher density development with no open space.

### **Zoning Ordinance**

The applicant attempts to argue that this request is consistent with Resolution 116-86 of the Zoning Ordinance. He implies that "Changed neighborhood conditions" would be a justification for this request, stating that there are a variety of uses and densities in the area and that R-1 zoning could provide a kind of transition between the higher density M-H and R-1 uses to the south and the more rural area to the north of the site. However, this is not made clear in the justification, and the contrary could hold true such that changes have not occurred significantly enough in the immediate vicinity of the site to warrant the zone change at the present time.

The justification statement also does not give any definitive evidence that this higher density use is more advantageous to the neighborhood as stated in policies or development scenarios of the North Valley Area Plan or the Comprehensive Plan. It appears instead that the property could be developed under A-1 zoning in a manner that is more consistent with the area in terms of lot size and uses than is being proposed by the applicant. It thus also appears that the request is a 'spot zone', particularly since the applicant has not demonstrated that such a zoning would facilitate the realization of any County plans.

### **Agency Comments**

Because this is a request for a zone change, Agency Comments are minimal and are oriented towards Building Permit requirements. County Zoning, Public Works, and Environmental Health comments indicate that if the site is developed, departmental regulations (e.g., water and sewer availability and connections, roads and access, grading and drainage plan, Zoning) must be followed. Existing structures on the property, which appear to be vacant, should be demolished following County Building requirements. Parks and Recreation staff point out that a mechanism should be developed (e.g., site plan, Cluster Housing) for preserving the connections between possible common open space and the Chamisal ditch, for the public and residents of the subdivision.

Planning staff has noted other problematic information in the justification, as follows: 1) It is stated that 12-14 lots would be constructed, and then that 14-16 lots would be constructed if the zone change is granted (staff calculates that only a maximum of 12-13 lots would be

possible if R-1 zoning is complied with); 2) the justification indicates the subdivision to the immediate south of the site has R-1 zoning, when it actually has M-H zoning. 3) the La Cienega del Norte Subdivison, approved in 1995, is sited as comparable with the proposed development when in fact it has a Special Use Permit for a Planned Development Area, and its lot sizes range from 18,000 square feet to more than 30,000 square feet; 4) County staff has no way of enforcing on or monitoring compliance with private covenants, restrictions or other agreements, and the provision of open space is not required under the requested R-1 zoning; and 5) the statement that the number of homes to be built will be “limited” seems inappropriate when the applicant is seeking to more than triple what the existing zoning allows with no satisfactory justification.

### Analysis Summary

Zoning	
Resolution 116-86	Has not demonstrated there are sufficient changed neighborhood conditions to justify the zone change. Has not adequately justified the request to County Plans and policies. Appears to be a ‘spot zone.’
Requirements	Unclear if the proposed (conceptual) lots would meet R-1 requirements.
Plans	
Comprehensive Plan	Not clear how it relates to Semi-urban designation.
Area Plan	Appears to be generally consistent with policies that call for residential uses along Second St., but makes no specific reference to North Valley Area Plan or Comprehensive Plan policies.
Other Requirements	
Environmental Health	Comply with relevant departmental requirements. Connect to Albuquerque/Bernalillo County sewer and water as prescribed in the availability statement.
Public Works	Need access permits.
Parks & Recreation	Needs means for ensuring trail and open space connection.

### Conclusion

Although there appears to be some justification for a zone change on the subject property, staff is unable to recommend approval of the request. The applicant has not demonstrated that the existing A-1 zoning is inappropriate for the site the property, as the property itself and adjacent properties to the north have been developed with A-1 uses. The request is also a ‘spot zone’ as the property does not abut properties with R-1 zoning, and no justification is



provided as to why it would not be a 'spot zone.' Further, no acceptable justification per the specific criteria of Resolution 116-86 has been provided, and it appears that the proposed zone change could negatively impact this particular area along Second St. where semi-rural uses still exist.

Finally, there is some concern being expressed by neighbors and Alameda North Valley Association. The letters state that the applicant has not justified the request and has not provided information to the neighbors. Such a zone change may be inappropriate for the particular area where the site is located (Attachment 3).

#### **ADDITIONAL STAFF COMMENTS, DECEMBER 7, 2005**

This case was heard at the September 7, 2005 CPC hearing. Staff expressed the concern that not enough information and justification had been provided by the applicant to assess the appropriateness of the proposed R-1 zoning for the property. In addition, R-1 zoning, which allows one-third acre lots in the Semi-Urban Area, may be inappropriate because it is not adjacent to R-1 properties and constitutes a 'spot zone,' most nearby lots are larger than one-third acre, and the applicant had not provided any evidence that the zone change would facilitate the realization of any County Plan. There also was substantial neighborhood opposition to the request.

At the hearing, the agent, whose services were obtained after the application was submitted, acknowledged that additional information and justification is needed for this request and requested the case be deferred. This would allow the agent and applicant to meet with the neighbors and to develop a plan for cluster housing with various amenities such as open space. The applicant would change the request from R-1 zoning to a Special Use Permit for a Planned Development Area.

On November 21, 2005, the applicant submitted a conceptual site plan and project description for a Planned Development Area for consideration at this (December 7, 2005) hearing (rather than a zone change) (Attachment 5). However, this will require a new application for a Special Use Permit following the requirements of Section 18.C of the Zoning Ordinance.

Staff continues to recommend denial of the request for R-1 zoning for the reasons stated in the above analysis, with the following findings for denial.

Neighbors continue to oppose the request for R-1 zoning (Attachment 4).

**FINDINGS:**

1. This request is for a zone map amendment from A-1 to R-1 on Tracts 178A, 179A1 & 179A2, located at 7413, 7417 & 7421 2<sup>nd</sup> Street NW, on the west side of 2<sup>nd</sup> Street between Roehl Road and Cottonwood Court, containing approximately 5.1 acres.
2. The property is located in the Semi-Urban Area of the Albuquerque/Bernalillo County Comprehensive Plan and the North Valley Area Plan.
3. The request is not consistent with Resolution 116-86 in that it would create a 'spot zone' as there are no R-1 zoned properties adjacent to the site.
4. The request is not consistent with Resolution 116-86 in that the applicant has failed to demonstrate that the existing zoning is inappropriate.
5. The request is not consistent with the health, safety, and general welfare of the residents Bernalillo County.

DENIAL, based on the above Findings.

Catherine VerEecke  
Program Planner

## **BERNALILLO COUNTY DEPARTMENT COMMENTS**

**Building Department:**

No adverse comments.

**Environmental Health:**

Parcel UPC#-101506323014530917 has COA flat rate sewer and no declared water source. Must prove existing drinking water source.

Parcel UPC#-101506322313530915 has COA water and sewer.

**Zoning Enforcement Manager:**

Must comply with below listed comments. There are no zoning violations on the property proposed for the zone change. No adverse comment at this time, however shall meet zoning requirements for lot sizes based on R-1/Rural area.

**Fire:**

No comments received.

**Public Works:**

**DRAN:**

1. A grading and drainage plan shall be prepared for the entire development prior to any development, or construction permits. This grading and drainage plan will include the roadway to the Second street access and all proposed lots. A grading and drainage plan must be prepared by an engineer licensed in the State of New Mexico.
2. DRE:
  1. The applicant is required to address access issues with MRGCD and NMDOT upon further development.
  2. Road improvements shall conform to Bernalillo County Standards with future development of this property.

**Parks & Recreation:**

BCPR does not object to the proposed land use change that would accompany a change in zoning. However, common open space, Chamisal ditch access, and access by the public to the on-site open space and ditch as stated by the applicant call for a site plan to be prepared to see how these features are melded with the built environment. BCPR recommends that a Special Use Permit for Planned Development be prepared and submitted. BCPR applauds the applicant for making these passive recreational amenities part of their proposal. These amenities will add value to the project for future residents of the cluster subdivision, as well as to members of the neighboring public who may not have easy access to the Chamisal ditch. BCPR will have no maintenance responsibilities whatsoever for any trail, open space, or other passive recreational amenity associated with this project.

**Sheriff's:**

No comment received

**COMMENTS FROM OTHER AGENCIES**

**MRGCOG:**

The Long Range Bikeway System identifies a separate trail along the western alignment of 2nd Street. Coordination should be made with the NMDOT and the County to ensure project inclusion as appropriate.

**AMAFCA:**

No comment.

**City Planning Department:**

No comments received.

**City Public Works:**

Transportation Planning: No adverse comments.

Transportation Development: No adverse comments.

Water Resources: I have no adverse comments on any of the September CPC cases.

**City Transit:**

No objection.

**City Environmental Health:**

No comments received.

**City Open Space:**

No comments received.

**NMDOT**

- A T.I.A will not be required.
- A State driveway permit will be required for access to the State Road.
- The permitting process shall be followed to obtain the permit.

**NEIGHBORHOOD ASSOCIATIONS:**

Alameda North Valley Association